

July 29, 2019

Ex Parte via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Promoting Telehealth and Telemedicine in Rural America, WC Docket No. 17-310

Dear Ms. Dortch:

As permitted by 47 C.F.R. § 1.1206(b)(2)(iv), GCI Communication Corp. (“GCI”) hereby replies to ex partes filed and presentations made on July 25, 2019, the date the Secretary released the Sunshine Act notice for the Commission’s August 1, 2019 public meeting.¹ At the outset, we note that, like GCI, a number of these filers support further time for stakeholders to assess the impact of the proposed reforms.²

1. There is a Consensus as to the Need for More Subcategories Within the Extremely Rural Tier in Alaska.

The ex partes filed on July 25 reflect a consensus in favor of creating multiple subcategories of the Extremely Rural tier in order to accommodate the widely varied infrastructural conditions in Alaska, which result in substantially different underlying costs of service. USTelecom and Schools, Health & Libraries Broadband Coalition (“SHLB Coalition”)

¹ See *FCC to Hold Open Commission Meeting Thursday, August 1, 2019*, FCC (Jul. 25, 2019), <https://docs.fcc.gov/public/attachments/DOC-358689A1.pdf>.

² See Letter from Dan Kettwich, President/CEO, Advanced Data Services, Inc., to Chairman and Commissioners, FCC, WC Docket No. 17-310, at 1 (filed July 25, 2019); Letter from John Windhausen, Jr., Executive Director, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 1 (filed July 25, 2019) (“SHLB 7/25/19 Ex Parte”); Letter from Andy Teuber, President and CEO, Kodiak Area Native Association, to Chairman and Commissioners, FCC, WC Docket No. 17-310, at 1 (filed July 25, 2019) (“KANA 7/25/19 Ex Parte”). See also Letter from Tina Pidgeon, Senior Vice President and General Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 1 (filed July 25, 2019) (“GCI Pidgeon 7/25/19 Ex Parte”).

support multiple subcategories within the Extremely Rural tier in Alaska.³ As USTelecom notes, although Alaska Communications (“ACS”) most recently proposed just a single division between on-road and off-road, the company also has proposed multiple off-road tiers.⁴ Likewise, Alaska Native Tribal Health Consortium and the Alaska Primary Care Association suggest that the new rules should at least distinguish between Satellite and Terrestrial.⁵ Yukon-Kuskokwim Health Corporation recommends conducting a site-specific classification.⁶ Kodiak Area Native Association points out:

Throughout the State of Alaska, the geography, circumstances, and infrastructure of ‘extremely rural’ communities are unique from one region or community to the next. It is essential that whatever rules are adopted rely upon sound, open data, interpreted in a manner which recognizes the real and diverse challenges and costs that are associated with telehealth in rural Alaska.⁷

We note that nothing in the record contradicts GCI’s observations that, in addition to on-road and off-road, there are critical differences between communities that are served only by satellite middle mile, fiber middle mile, or microwave middle mile without fiber;⁸ in fact, the Commission has acknowledged these differences in the context of Alaska Plan requirements.⁹ Thus, GCI respectfully requests that the Commission divide Extremely Rural areas in Alaska into four sub-tiers, placing each Extremely Rural community assigned to one of these tiers: On-road system/fiber middle mile; Off-road system/fiber middle mile; Off-road system/terrestrial

³ Letter from B. Lynn Follansbee, Vice President – Policy and Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 4 (filed July 25, 2019) (“USTelecom 7/25/19 Ex Parte”); SHLB 7/25/19 Ex Parte at 3.

⁴ *Compare* Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 1–2 (filed July 25, 2019) (“ACS 7/25/19 Ex Parte”) *with* Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 2–3 (filed July 19, 2019).

⁵ Letter from Gerald Moses, Vice President of Intergovernmental Affairs, Alaska Native Tribal Health Consortium, to Chairman and Commissioners, FCC, WC Docket No. 17-310, at 1–2 (filed July 25, 2019); Letter from Nancy Merriman, Executive Director, Alaska Primary Care Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 1 (filed July 25, 2019).

⁶ Letter from Christopher Beltzer, General Counsel, Yukon-Kuskokwim Health Corporation, to Chairman and Commissioners, FCC, WC Docket No. 17-310, at 1–2 (filed July 25, 2019).

⁷ KANA 7/25/19 Ex Parte at 1.

⁸ *See* GCI Pidgeon 7/25/19 Ex Parte at 2.

⁹ *See, e.g., Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 10139, 10146, 10147–48, 10149 ¶¶ 17, 24, 28 (2016) (recognizing the effects of varied infrastructure on Alaska networks). These distinctions were further recognized in the Alaska Plan performance plans approved by the Wireline Competition and Wireless Telecommunications Bureaus.

non-fiber middle mile; and Satellite-only middle mile.¹⁰ Indeed, it would be arbitrary and capricious to ignore these differences.¹¹

Finally, we agree with ACS that any division of the Extremely Rural tier into “on-road” and “off-road” sub-tiers must be based on an objective, verifiable source that can be easily accessed by the Commission and USAC. Also, the source should be available in advance of developing prices for services and cannot be subject to manipulation by service providers or healthcare providers.¹² The Alaska Department of Commerce’s “Community Transportation Access and Overview”¹³ satisfies these criteria and can be used to determine on-road/off-road status, as ACS proposed.¹⁴ Middle mile status for a particular community can be determined, for the most part, from the certified Alaska Plan middle mile data submissions already submitted by Alaska Plan participants.¹⁵ Because these participants serve the vast majority of the state, including many areas also served by non-Alaska Plan participants, any remaining areas should be able to be covered through a one-time, targeted supplemental data collection.¹⁶

2. USTelecom’s Published Rate Exception Is Warranted, but Should Rationally Include E-rate and HCF Rates for Similar Services.

GCI agrees with USTelecom that the median rate will be too narrow and some further exceptions are warranted. USTelecom’s proposal to permit rates in a tariff or publicly available service guide/guidebook and for which the service provider has a retail customer is a step towards reconciling the Commission’s general regulatory treatment of rates for interexchange and BDS services with those rates provided to rural healthcare providers.¹⁷ USTelecom’s limitation to retail customers not supported by the RHC Program or E-rate is too narrow, however, and cannot be rationally reconciled with the Commission’s mechanisms applicable to either the RHC Health Care Connect Fund (“HCF”) or the E-rate programs. In both E-rate and

¹⁰ *Id.*

¹¹ Letter from John T. Nakahata, counsel to GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310, at 5–8 (filed July 25, 2019) (“GCI Nakahata 7/25/19 Ex Parte”).

¹² ACS 7/25/19 Ex Parte at 1.

¹³ *Id.* at attachment.

¹⁴ *Id.* at 1.

¹⁵ GCI Pidgeon 7/25/19 Ex Parte at 2. Alaska Plan data has already been submitted, so cannot now be manipulated. Providers were required to certify the accuracy of this data, which is also backstopped by 18 U.S.C. § 1001. *See Connect America Fund – Alaska Plan*, Order on Reconsideration, 33 FCC Rcd. 2068, 2081 (WCB 2018) (“An officer of the company must certify that the information is accurate and complete.”) Although the Alaska Plan data was filed confidentially, the Commission or USAC could use it to create a publicly available list reflecting the classification of each community.

¹⁶ GCI Pidgeon 7/25/19 Ex Parte at 2.

¹⁷ *See* USTelecom 7/25/19 Ex Parte at 1–2.

HCF, the competitively bid rates are the actual rates charged and used to determine support, without an additional rate regulation overlay. There is thus no rational basis for excluding HCF and E-rate rates from the exception proposed by USTelecom. Indeed, both HCF and E-rate show that a beneficiary copayment of as low as ten percent is sufficient to discipline rates through competitive bidding.¹⁸ Of course, the concerns raised by USTelecom with respect to the Draft Order's proposed rate ceilings, as well as consistency with E-rate and HCF, would be better—and more congruently with existing FCC rate regulation—addressed by GCI's proposal to establish a phased-in minimum beneficiary contribution.¹⁹

3. GCI Agrees with Several of USTelecom's Other Proposals and Concerns.

GCI also agrees with USTelecom that greater clarity is needed as to how USAC (or the Bureau or Commission, depending on the level of delegation) “will address different contract terms, volume discounts, and different feature sets in calculating the median rate for a service as is described in the draft R&O.”²⁰ GCI agrees with USTelecom that if the Commission or USAC cannot adequately address these considerations, it should set the median based on month-to-month rates without volume or term discounts.²¹ Similarly, if the Commission or USAC cannot adequately distinguish feature sets (including various service quality parameters), then it should do so at the highest quality feature set, as implied by USTelecom.²²

Finally, USTelecom also highlights that because the Telecom Program only covers telecommunications services, it would be “inappropriate” to include in the median calculation rates for services that are not telecommunications services.²³ GCI agrees that basing rates for telecommunications services on rates for non-telecommunications services is irrational.

¹⁸ HCF has a copayment of 35 percent, and E-rate has a sliding scale of discounts, with the maximum discount, and thus the lowest beneficiary copayment, being ten percent. *See* 47 C.F.R. §§ 54.633, 642 (establishing HCF competitive bidding and beneficiary contribution requirements), and 54.505 (E-rate discount percentages). Ignoring these other regimes would also be arbitrary and capricious.

¹⁹ *See* GCI Nakahata 7/25/19 Ex Parte at 1–5.

²⁰ USTelecom 7/25/19 Ex Parte at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2–3. GCI further agrees that the Commission did not seek notice on including the rates for ineligible services in the median. *Id.* at 3.

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Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

John T. Nakahata

Counsel to GCI Communication Corp.

cc: Preston Wise
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